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 CITY OF ANTIOCH

UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA

SANTEYA DANYELL WILLIAMS;  
 MARY RUTH SCOTT; KAREN  
 LATREECE COLEMAN; PRISCILLA  
 BUNTON, and ALYCE DENISE PAYNE,  
 on behalf of themselves and all others  
 similarly situated ,

Plaintiffs,

vs.

CITY OF ANTIOCH,

Defendant.

Case No. C08-02301 SBA

**DEFENDANT ANTIOCH'S MOTION FOR  
 JUDGMENT ON THE PLEADINGS PER  
 FRCP 12(C) AND (H)(2)(B) TO DISMISS  
 PLAINTIFF BUNTON'S AND THE  
 CLASS' CLAIM FOR DAMAGES PER  
 CIVIL CODE § 52.1 (EIGHTH CLAIM  
 FOR RELIEF)**

Date: January 12, 2010

Time: 1:00 p.m.

Judge: Sandra B. Armstrong

Trial: None Set

Defendant City of Antioch moves this Court for a Judgment on the Pleadings to dismiss the Eighth Claim for Relief in Plaintiffs' First Amended Complaint with regard to Plaintiff Priscilla Bunton and the class. This motion is brought per FRCP 12(c) and (h)(2)(B) on the grounds that it is apparent on the face of the pleading that Plaintiff Bunton and the class failed to meet essential state tort claim requirements to seek statutory damages under Cal. Civil Code § 52.

**I. ISSUES TO BE DECIDED**

The issues to be decided in this motion and the short answers are as follows:

**ISSUE No.1** Is Plaintiff Priscilla Bunton barred from seeking damages under Cal. Civil Code § 52 in this lawsuit per Cal. Gov't Code § 945.4 for failure to file a government tort claim?

Case No. C08-02301 SBA - ANTIOCH'S FRCP 12 2  
MOTION TO DISMISS

1 ("FAC") on July 16, 2008. (Exhibit A). Plaintiffs seek injunctive and declaratory relief, as well  
 2 as statutory damages for the class and actual damages (trebled) for the individual Plaintiffs under  
 3 Cal. Civil Code § 52. (Plaintiffs' Eighth Claim for Relief, Exhibit A). Plaintiffs seek damages  
 4 *only* under Cal. Civil Code § 52. (Exhibit A, ¶ 148.) The FAC further states that government tort  
 5 claims were filed by Plaintiffs Williams, Scott, Coleman and Payne. (Exhibit A, ¶ 99.)

6 Defendants now seek to dismiss Plaintiffs' Eighth Claim with respect to Plaintiff Bunton  
 7 and the class pursuant to FRCP 12(c) and (h)(2)(B) because it is apparent on the face of the  
 8 pleading that they failed to meet vital government tort claim requirements.

### 9 **III. LEGAL ANALYSIS**

#### 10 **A. Legal Standards**

##### 11 **1. FRCP 12(c) and (h)(2)(B)**

12 Under FRCP 12(c) and (h)(2)(B), a motion to dismiss for failure to state a claim may be  
 13 made in a motion for judgment on the pleadings after an answer has been filed. *Martorello v. Sun*  
 14 *Life Assurance Company of Canada*, 2009 WL 1227011, \*3 (N.D. Cal. May 1, 2009); (see also  
 15 *Aldabe v. Aldabe*, 616 F.2d 1089, 1093 (9th Cir.1980) (holding that Rule 12(h)(2) allows a  
 16 motion for judgment on the pleadings, raising the defense of failure to state a claim, even after an  
 17 answer has been filed. The case for adopting such a position is further strengthened where the  
 18 answer included the defense of failure to state a claim.).

19 When Rule 12(c) is used to raise a defense for failure to state a claim, "the motion for  
 20 judgment on the pleadings faces the same test as a motion under Rule 12(b)(6)." *Martorello*,  
 21 2009 WL 1227011, \*3 (citing *McGlinchy v. Shell Chemical Co.*, 845 F.2d 802, 810 (9th  
 22 Cir.1988), holding that dismissal is proper "only if it is clear that no relief could be granted under  
 23 any set of facts that could be proven consistent with the allegations."); see also *Morgan v. County*  
 24 *of Yolo*, 436 F.Supp.2d 1152, 1154-1155 (E.D. Cal. 2006), holding that judgment on the  
 25 pleadings is appropriate if, assuming the truth of all materials facts pled in the complaint, the  
 26 moving party is nonetheless entitled to judgment as a matter of law.)

27 Defendant has answered Plaintiffs' FAC and has raised the defense of failure to state a  
 28 claim in its answer. (See Defendant's 1. Affirmative Defense.) Further, as will be shown below,

1 Plaintiff Bunton and the class failed to meet prerequisite state tort claim requirements, thus  
 2 entitling the Defendant to a judgment as a matter of law. Defendant is therefore entitled to bring  
 3 this motion to dismiss for failure to state a claim under FRCP 12(c) and (h)(2)(B).

4 2. The Court May Consider Judicially Noticed Matters

5 Judicially noticed documents may be considered along with the complaint in deciding a  
 6 Rule 12 motion. *Morgan*, 436 F.Supp.2d at 1155 (“In addition to considering the allegations of  
 7 the complaint, like a motion under Rule 12(b)(6) the court may also take into account materials to  
 8 which it can take judicial notice. A Rule 12(c) Motion for Judgment on the Pleadings may  
 9 consequently be granted if, after assessing both the complaint, plus matters for which judicial  
 10 notice is proper, it appears “beyond doubt that the [non-moving party] cannot prove any facts that  
 11 would support his claim for relief ...”) (internal cites omitted); see also *Barron v. Reich*, 13 F.3d  
 12 1370, 1377 (9<sup>th</sup> Cir. 1994) (holding that “additional facts [may be] considered by the court [that]  
 13 are contained in materials of which the court may take judicial notice.”)

14 Defendant requests the Court to take judicial notice of the government tort claims filed by  
 15 Plaintiffs Williams, Scott, Coleman and Payne (Exhibit B1-B4).<sup>4</sup> The authenticity of the claims  
 16 is undisputed (since they were filed by the Plaintiffs in this action) and the claims are public  
 17 records, which can be judicially noticed per FRE 201. As such, the government tort claims can  
 18 be properly considered in deciding this Rule 12 motion.

19 3. Cal. Gov’t Code § 945.4

20 “No suit for money or damages may be brought against a public entity ... until a written  
 21 claim therefore has been presented to the public entity.” Cal. Gov’t Code § 945.4. In other  
 22 words, actions for damages against public entities are preconditioned on the timely filing of a  
 23 proper claim. As the California Supreme Court has explained, “[t]imely claim presentation is not  
 24 merely a procedural requirement, but is, as we long ago concluded, ‘a condition precedent to  
 25 plaintiff’s maintaining an action against defendant.’” *Shirk v. Vista Unified School Dist.*, 42  
 26 Cal.4<sup>th</sup> 201, 209 (2007); citing *State of California v. Superior Court (Bodde)*, 32 Cal.4<sup>th</sup> 1234,

27 \_\_\_\_\_  
 28 <sup>4</sup> See Defendant’s Request for Judicial Notice, filed concurrently herewith.

1 1240 (2004), (quoting *Williams v. Horvath*, 16 Cal.3d 834, 842 (1976)) (emphasis added). See  
 2 also *City of San Jose v. Superior Court*, 12 Cal.3d 447, 452 (1974).

3 Further, it is well settled that claims statutes must be satisfied even in face of the public  
 4 entity's actual knowledge of the circumstances surrounding the claim. Such knowledge –standing  
 5 alone- constitutes neither substantial compliance nor basis for estoppels. *City of San Jose*, 12  
 6 Cal.3d at 455. The purpose of this claim-filing statute is to give the public entity the opportunity  
 7 to investigate and negotiate settlement of claims, and thus avoid litigation. The filing of a claim is  
 8 not simply an exercise in paper work or a perfunctory condition precedent to instituting litigation.  
 9 There must be compliance with the requirements of the statute which will permit the government  
 10 to make a meaningful decision in allowing or disallowing the claim. *Eaton v. Ventura Port*  
 11 *District*, 45 Cal.App.3d 862, 867 (1975)

12 In the context of class actions, an administrative claim may be filed on behalf of a class if  
 13 the information presented in the tort claim is in "substantial compliance" with the statutory  
 14 requirements of Cal. Gov't Code § 910. *City of San Jose*, 12 Cal.3d at 452. While it is not  
 15 necessary to file a claim individually for each purported class member, the class claim must  
 16 nonetheless provide "sufficient information to identify and make ascertainable the class itself" in  
 17 order to satisfy the claims statute. *Id.* at 457.<sup>5</sup> The circumstances of the occurrence and a  
 18 description of the liability set forth in the class claim must "establish a well-defined community  
 19 of interest in questions of law and fact" so as "to portray [a] community of interest." *Eaton.*, 45  
 20 Cal.App.3d at 869. Class claims containing "diverse and individualized" theories of liability or  
 21 factual scenarios underlying those theories do not meet this test. *Id.* The Court of Appeals in  
 22 *Eaton* declined class certification because the class claim did not substantially comply with the  
 23 claim statute; and the action was not maintainable as a class action because of the number, variety  
 24 and diversity of the individual plaintiffs' respective claims. ("The only common feature appearing

25 \_\_\_\_\_  
 26 <sup>5</sup> At a minimum, class claims should be submitted on the claimant's own behalf as well as "all others similarly  
 27 situated" class members. See, for instance, *Dhuyvetter v. City of Fresno*, 110 Cal.App.3d 659 (1980) (claim filed on  
 28 behalf of named property owners ... and "on behalf of all persons similarly adversely affected."); *Craft v. County of*  
*San Bernardino*, 2006 WL 4941829 \*4 (C.D.Cal. March 23, 2006) (claim filed on claimant's own behalf as well as  
 "all others similarly situated.")

1 in the various allegations is the flooding of a river. If anything, the plaintiffs, named and  
 2 unnamed, possess in common only a diversity of interest in fact and law. No discernable class can  
 3 be manufactured from this mixed bag of litigants.” *Id.*)

4 **B. The Eighth Claim under Cal. Civil Code §52 Should Be Dismissed**  
 5 **With Regard to Plaintiff Bunton and the Class Because They Did Not**  
 6 **File The Prerequisite State Tort Claim**

7 1. Plaintiff Bunton’s Damage Claim under Cal. Civil Code §52 Is  
 8 Barred as a Matter of Law Because She Did Not File a Tort Claim

9 Plaintiff Bunton admittedly failed to file a state tort claim against Defendants.<sup>6</sup> That  
 10 failure is apparent on the face of the pleading. Her failure to comply with this mandatory  
 11 procedural requirement is fatal, in that she cannot maintain her claim for damages under Cal.  
 12 Civil Code §52 against Defendants. Cal. Gov’t Code § 945.4.

13 Further, per the California Supreme Court’s ruling in *San Jose*, the fact that the other four  
 14 named Plaintiffs filed state tort claims cannot cure Plaintiff Bunton’s failure. They did not file  
 15 their claims on behalf of Priscilla Bunton and the City’s knowledge of the other claims –standing  
 16 alone- constitutes neither substantial compliance nor basis for estoppel with regard to the distinct  
 17 and separate state tort claim requirement for individual Plaintiff Bunton. *City of San Jose*, 12  
 18 Cal.3d at 455. See also *Eaton*, 45 Cal.App.3d at 867 (emphasizing that the filing of a claim is not  
 19 simply an exercise in paper work or a perfunctory condition precedent to instituting litigation  
 20 because the purpose of the claim-filing statute is to give the public entity the opportunity to  
 21 investigate and negotiate settlement of claims, and thus avoid litigation.)

22 In sum, it is apparent on the face of the pleading that Plaintiff Bunton admittedly failed to  
 23 meet a condition precedent to her maintaining an action against Defendant for damages under  
 24 Cal. Civil Code § 52. Consequently, it is clear that no relief could be granted under any set of  
 25 facts that could be proven consistent with Plaintiffs allegations because assuming the truth of all  
 26 materials facts pled in the complaint, the Defendant is entitled to judgment as a matter of law on  
 27 Plaintiff Bunton’s Eighth Claim for Relief under Cal. Civil Code § 52, which must be dismissed.

28 <sup>6</sup> Exhibit A, ¶ 99, “Plaintiffs Williams, Scott, Coleman and Payne timely served notices of claims ...”



2. The Class' Damage Claim under Cal. Civil Code §52 Is Barred as a Matter of Law Because Plaintiffs Williams, Payne, Scott and Coleman Filed Their State Tort Claims Only as Individuals And Not On Behalf of "Similarly Situated" Class Members

Based on the California Supreme Court's ruling in *San Jose*, an administrative claim may only be filed on behalf of a class if the information presented in the tort claim is in "substantial compliance" with the statutory requirements of Cal. Gov't Code § 910, meaning that the class claim must provide "sufficient information to identify and make ascertainable the class itself." *San Jose*, 12 Cal.3d at 452, 457. The class claim must further establish a well-defined community of interest and may not contain diverse and individualized factual scenarios. *Eaton*, 45 Cal.App.3d at 869.

Plaintiffs' claims do not meet these requirements. First and foremost, no claim was ever submitted on behalf of the class. It is apparent on the face of the pleading that Plaintiffs Williams, Scott, Coleman and Payne only filed individual claims on their own behalf. (See Exhibit A, ¶ 99, Exhibit B1-B4) The claims were not filed "on behalf of similarly situated individuals," and do not, in any other way, indicate that a class claim was submitted. The claims do not contain sufficient information, let alone a class definition, to identify and make ascertainable a class to give the Defendant the opportunity to investigate and negotiate settlement of claims on behalf of an entire class to perhaps avoid litigation. Again, the mere fact that four individuals filed separate claims at separate times does not put the Defendant on notice of a class claim. *City of San Jose*, 12 Cal.3d at 455 (the City's knowledge of the other claims constitutes neither substantial compliance nor basis for estoppel.)

Further, Plaintiffs claims fail to establish a well-defined community of interest in questions of law and fact. Rather, the claims contain diverse and individualized factual scenarios<sup>7</sup> and, thus, do not meet the substantial compliance requirement of a class claim.

In sum, it is apparent on the face of the pleading that the named Plaintiffs failed to meet a condition precedent on behalf of the putative class members to maintain a class action against

<sup>7</sup> The issue of individualized adjudication of Plaintiffs' claims is discussed in detail in Defendant's opposition brief to Plaintiffs' class certification motion, filed concurrently herewith, which Defendant incorporate herein.

1 Defendant for statutory damages under Cal. Civil Code § 52. Consequently, it is clear that no  
 2 relief could be granted under any set of facts that could be proven consistent with Plaintiffs  
 3 allegations because assuming the truth of all materials facts pled in the complaint, the Defendant  
 4 is entitled to judgment as a matter of law on the class' Eighth Claim for Relief under Cal. Civil  
 5 Code § 52, which must be dismissed.

#### 6 IV. CONCLUSION

7 In sum, it is apparent on the face of the pleading that Plaintiff Priscilla Bunton is barred  
 8 from seeking damages under Cal. Civil Code § 52 in this lawsuit per Cal. Gov't Code § 945.4 for  
 9 failure to file a government tort claim. Likewise, it is also apparent on the face of the pleading  
 10 and the judicially noticed claims filed by Plaintiffs Williams, Scott, Coleman and Payne, that the  
 11 class is barred from seeking damages under Cal. Civil Code § 52 in this lawsuit per Cal. Gov't  
 12 Code § 945.4 for failure to file a government tort claim. As such, Defendant respectfully asks  
 13 this Court to dismiss the Eighth Claim for Relief for damages under Cal. Civil Code § 52 with  
 14 regard to Plaintiff Bunton and the class, per FRCP 12(c) and (h)(2)(B).

15  
 16 Dated: December 3, 2009

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17  
 18  
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